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ABSTRACT

This paper analyzes the implications of the Education Reform Act of 1988 on further education in Great Britain. The six major sections of the paper examine the following: (1) the sections of the act; (2) major proposals in the Education Reform Act 1988; (3) other general information about the act; (4) summary of further education clauses of the act; (5) impact of the act on further education; and (6) some key issues for further education arising from the Education Reform Act. Three appendixes provide a timetable for implementation of the act, discuss some differences between the Education Reform Act 1988 and the Green Paper "Maintained Further Education: Financing Governance and the Law," and list some acronyms and abbreviations used. (KC)

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EDUCATION REFORM ACT 1988 AND FURTHER EDUCATION
GENERAL BACKGROUND INFORMATION

INTRODUCTION

The Education Reform Act received Royal Assent on July 29 1988. Most of the discussions inside and outside Parliament concentrated on schools. There are however major implications for further education (FE). The term 'college' is not used in the Act.

This paper is broken down as follows:

Section A - The Sections of the Act

Section B - Major Proposals in the Education Reform Act 1988

Section C - Other General Information about the Education Reform Act 1988

Section D - Summary of Further Education Clauses of Education Reform Act 1988, ie, Part II Chapter III

Section E - Impact of the Act on FE

Section F - Some Key Issues for Further Education arising from the Education Reform Act

Other References

Appendix A - Timetable

Appendix B - Some Differences between Education Reform Act 1988 and Green Paper "Maintained Further Education: Financing, Governance and the Law"

Appendix C - Some Acronyms and Abbreviations used

The paper is intended for reference and is not a detailed analysis. The FE section of the Act is primarily enabling legislation and its interpretation will become clearer with publication of regulations, DES circulars and administrative memoranda. Readers may be interested to compare this paper with "Some facts about the Education Reform Bill" IBN 2478 February 1988.

A THE SECTIONS OF THE ACT

NB PARTS II AND IV ARE BROKEN DOWN IN MORE DETAIL THAN PARTS I AND IV

PART I SCHOOLS (SECTIONS 1 - 119)

CHAPTER I the curriculum (1 - 25)

- II admission of pupils to county and voluntary schools (25 - 32)
- III schools - finance and staff (33 - 51)
- IV grant-maintained schools (52 - 104)
- V miscellaneous - city colleges (105)
 - charges in maintained schools (106 - 111)
 - miscellaneous (112 - 116)
 - general and supplementary provisions (117 - 118)
 - interpretation of part I (119)

PART II HIGHER AND FURTHER EDUCATION (SECTIONS 120 - 161)

CHAPTER I local authority functions with respect to higher and further education (120)

- II reorganisation of provision and funding of higher education (121 - 138)
 - the higher education corporations (121 - 128)
 - designation of certain institutions for funding by the PCFC etc (129 - 130)
 - new arrangements for funding higher education (131 - 134)
 - supplementary (135 - 138)
- III finance and government of locally funded further and higher education (139 - 155)
 - further and higher education funding schemes (139 - 147)
 - appointment and dismissal of staff during financial delegation (148 - 149)

- withdrawal of delegated powers (150)
- government and conduct of maintained further and higher education institutions (151 - 152)
- government of designated assisted institutions (153)
- miscellaneous and supplementary (154 - 155)

IV miscellaneous and supplementary (156 - 161)

PART III EDUCATION IN INNER LONDON (SECTIONS 162 -196)

PART IV MISCELLANEOUS AND GENERAL (SECTIONS 197 - 238)

- establishment and functions of education assets board (197 - 201)
- academic tenure (202 - 208)
- grants (209 - 213)
- unrecognised degrees (214 - 217)
- miscellaneous provisions (218 - 226)
- Wales (227 - 229)
- supplementary (230 - 238)

RELEVANT SCHEDULES

- Schedule 2 the curriculum and assessment councils
- Schedule 5 transition to grant-maintained status
- Schedule 6 courses of higher education
- Schedule 7 the higher education corporations
- Schedule 8 the funding councils and the assets board
- Schedule 9 determination of full-time equivalent enrolment numbers
- Schedule 10 supplementary provisions with respect to transfers
- Schedule 11 the university commissioners

B MAJOR PROPOSALS IN THE EDUCATION REFORM ACT 1988

- * an end to artificial limits on parents' first choice of school
- * control of school budgets to be handed over to governors of secondary schools and larger primary schools
- * a national curriculum with 3 compulsory subjects, English, Maths and Science, and 7 foundation subjects
- * testing for all children at 7 (or thereabouts), 11, 14 and 16
- * religious education to be given special status equal to that of a foundation subject
- * a compulsory daily act of collective worship which should be in the main Christian
- * governors of schools with more than 300 pupils eligible to apply for grant-maintained status (opting out from LEA control) subject to ballot of registered parents
- * schools to be allowed to charge for certain activities
- * polytechnics to be established as corporate bodies independent from LEA control
- * a Polytechnics and Colleges Funding Council (PCFC) to be set up to administer government funds
- * control of further and higher education college budgets to be devolved to governing bodies; size and composition of governing bodies to be reformed
- * the Inner London Education Authority (ILEA) to be abolished and education to be handed over to the Inner London boroughs
- * a University Funding Council to replace the University Grants Committee

C OTHER GENERAL INFORMATION ABOUT THE EDUCATION REFORM ACT 1988

- * when first published on 20 November 1987, the Bill had 147 sections. These had increased to 238 by the time the Bill received Royal Assent
- * the Bill had 220 hours of debate in the Commons and 154 in the Lords
- * during the Bill's passage through Parliament, the Government put down numerous amendments to its own Bill, eg, the decision to abolish ILEA. During the House of Commons Committee stage, the Government tabled 45 amendments to part II chapter III, ie, the FE sections
- * Part II was originally 33 sections in length (81 - 113); this number had increased to 42 sections (120 - 161) by Royal Assent
- * the Bill was often referred to as "GERBIL" (the Great Education Reform Bill)
- * in general, the Act extends to England and Wales only, although provisions relating to universities extend also to Scotland
- * part II broadly follows White Paper "Higher Education: Meeting The Challenge" and Green Paper "Maintained Further Education: Financing, Governance and the Law" (See Appendix A)
- * under original Bill, Secretary of State for Education and Science given 180 new powers (usually by statutory instrument). This figure now totals well over 300.

D SUMMARY OF FURTHER EDUCATION CLAUSES OF EDUCATION REFORM ACT 1988, ie, PART II CHAPTER III

NEW DEFINITION OF FURTHER EDUCATION

Section 120(2) replaces section 41 of 1944 Education Act.
Section 41 now reads:

It shall be the duty of every LEA to secure provision for their area of adequate facilities for further education

- ie (a) 'further education' means - full-time and part-time education and training for persons over compulsory school age (including vocational, social, physical and recreational training) other than higher education
- (b) organised leisure-time occupation provided in connection with (a)

Schedule 6 NB Advanced courses, ie, standard higher than "A" level = higher education eg degree courses; Diploma of Higher Education; HND or HNC of BTEC; Diploma in Management Studies; Certificate of Education.

All other provision for those who have left school = further education

S120(1) LEA no longer has duty to secure provision for their area of facilities for higher education; but has power to do so.

DELEGATION SCHEMES

- S139(1) every LEA required to prepare a scheme to provide for:
- S139(2) (a) determination of the share of the budget for each institution covered by their scheme
- (b) delegation of the management of an institution's budget share for any year to the governing body of the institution if covered by the scheme.

OTHER SECTIONS ON DELEGATION SCHEMES

- S139(1) * scheme to be approved by Secretary of State
- S140(4) * LEA must consult governing body

- S142(2) * LEA must provide institutions with budget agreed under scheme
- S143(1) * scheme must include formula to take account
& of numbers of students and institutional
S143(3) variations. This formula shall take into
account student numbers and other factors
affecting needs of individual institutions
- S142(6) * governing body may spend sum as they think
fit or delegate this to the principal
- S144 * only applies to colleges with 200+ FTE
students (unless varied by the Secretary of
State)
- S147 * scheme must be published
- S150 * delegated powers may be suspended or
withdrawn by LEA subject to appeal to the
Secretary of State if persistent failure by
governing body to comply with requirements of
scheme or if finances not managed
satisfactorily.

GOVERNING BODIES

- S148(3) * delegated powers to select full-time and
part-time staff for appointment to employment
of LEA and to determine their duties and
grading; and to require LEA to remove from
college staff whom they consider should no
longer work there
- S148(8) * when selection of senior staff involved,
chief education officer must be consulted
before decision made
- S149(4) * LEA meets costs arising from dismissals or
premature retirement of member of staff;
amount determined by governing body; this
amount not to be deducted from college
budget
- S151(1-2) * both instruments of government setting out
constitution (the instruments) and
instrument setting out conduct of the
institution (the articles) to be approved by
the Secretary of State
- S152(1) * governing body to be not larger than 25
members of whom
- S152(1a) - not less than 50% members of governing
body to be

S152(2a & 2b) (a) engaged or employed in business, industry or any profession or in any other field of employment relevant to the activities of the institution or to represent persons so engaged or employed.

NB Elected members or employees of LEA or local authority excluded from this category

(b) cooptees

S152(1b) - not more than 20% to represent LEA

S152(5) * articles of government shall determine the functions of the LEA, governing body, principal and academic board; and regulate constitution and function of GB committees

S152(8-9) * LEA shall appoint to GB persons nominated by bodies determined by LEA and approved by Secretary of State; and in determining these bodies the LEA shall consult the GB, bodies representing business or industrial interests, the professions and trade unions

CORPORATE STATUS

S156(5) * when it is proposed to form a company to conduct any institution providing full-time education maintained by the LEA, proposed memorandum and articles of association should be approved by Secretary of State.

E IMPACT OF THE ACT ON FE

The terms non-advanced further education (NAFE) and advanced further education (AFE) will be replaced by the simple terms 'further education' and 'higher education'.

Further education now has a clearer legal identity. Before the Act, much of FE provision was 'ultra vires' (under the 1944 Education Act, LEAs were meant to draw up schemes for approval to the Education Minister. Few LEAs had done this).

The Act gives the LEA responsibility for the strategic planning of provision. LEAs will draw up a delegation scheme to be approved by the Secretary of State together with articles and instruments of government of colleges.

The LEA will play 3 key roles:

- straightforward regulation through financial controls
- coordination and leadership of the service
- advice and support to colleges.

Colleges governing bodies will have responsibility for spending monies within the budget laid down by the LEA and for appointing staff. They will be able to:

- vire across expenditure headings
- carry forward surpluses (and deficits)
- have incentives to earn additional income by providing courses and other services and facilities
- appoint and dismiss staff
- determine staffing levels.

College budgets will be determined on the basis of a formula which takes account of unit costs and weighted student numbers. Colleges will be able to supplement their income from other sources without penalty.

F SOME KEY ISSUES FOR FURTHER EDUCATION ARISING FROM THE
EDUCATION REFORM ACT

- * planning vs delegation - how can LEAs make strategic plans work when GBs have delegated powers and can vire between expenditure headings?
- * future college-LEA relationships - necessity of establishing new ways of working together
- * financial and managerial competence of senior managers - with increased responsibilities need for a new breed of manager. Either academic staff who have been trained as managers or recruits from industry to take on senior posts
- * future relationships between college principal, college management and governing body - need to set up new relationships
- * increased plant bargaining between college management and teaching and other unions
- * confusion of LEA being the employer while governing body appoints and dismisses staff - possibility of clarification of the law through test cases in industrial tribunals
- * long-term impact of national curriculum and testing in schools or colleges - this issue has as yet hardly been addressed
- * future of higher education in FE colleges - will PCFC be more likely to offer contracts to PCFC institutions?
- * future of further education in PCFC institutions - will LEAs favour their FE colleges in their strategic plans?
- * future of Inner London Education Authority colleges after abolition
- * impact of city technology colleges and grant-maintained schools - will lead to increased competition
- * future WRNAFE/NAFE planning (now to be called FE planning) - in light of the increased privatisation of training
- * impact on LEA equal opportunities policies, particularly those involving staff selection - colleges may need to draw up own policies
- * increased emphasis on reviewing colleges' performance, both financial and academic/educational
- * continuing emphasis on reviewing performance of staff in colleges

- * colleges becoming more responsive to the needs of clients - marketing to continue to be central to work of colleges
- * problem of attracting competent industrialists with time and commitment to serve on governing bodies - DES is treating this seriously as a concern
- * future of post 16/tertiary reorganisation in light of schools being able to opt out
- * to whom will governors be accountable? - presumably in the past governors have been accountable through the LEA to the electorate
- * will many colleges seek corporate status when DES guidance states that such colleges will remain within LEA sector?

BUT ONE THING IS CERTAIN . . .

- * a period of uncertainty!

OTHER REFERENCES

John Graystone, Education Reform Bill 1987 - Some Facts, FESC IBN 2478, February 1988

John Graystone, Education Reform Act: Governance of Maintained Further and Higher Education Colleges, DES Circular 8/88, October 1988 FESC IBN (forthcoming)

Frank Walton, Education Reform Bill and Management of Personnel, FESC IBN 2608, April 1988

R J Kedney, Education Management Devolution to Colleges, FESC IBN 2588, August 1988

APPENDIX A

TIMETABLE

- 1 April 1987, "Higher Education: Meeting the Challenge" (White Paper stating intention to grant corporate status to polytechnics and certain institutions of higher education and to set up PCFC)
- 7 May 1987, General Election
- 7 August 1987, "Maintained Further Education: Financing Governance and the Law" (Green Paper, responses required by 9 October 1987, setting out proposals to delegate budgets to colleges and to change composition of governing bodies)
- 20 November 1987, Education Reform Bill published
- 21 April 1988, "Local Management of FE Colleges: Delegation Schemes and Articles of Government" published (draft guidance notes; responses required by 15 July)
- 25 May 1988, "Governance of Maintained Further and Higher Education Colleges" published (draft guidance notes; responses by 22 July 1988)
- 29 July 1988, Education Reform Act receives Royal Assent
- 12 September 1988, DES Circular 8/88 "Education Reform Act 1988: Governance of Maintained Further and Higher Education Colleges"
- 12 September 1988, DES issue Guidance Note on Corporate Status
- 13 September 1988, DES Circular 9/88 "Education Reform Act 1988: Local Management of Further and Higher Education Colleges: Planning and Delegation Schemes and Articles of Government"
- 30 June 1989 deadline for submission of revised college instruments of government (not ILA)
- September 1989 - April 1990, reconstitution of college governing bodies
- 30 September 1989, deadline for submission of draft schemes and revised college articles of government for LEAs (not ILA)
- 1 April 1990, approved schemes and articles of government for as many LEAs as possible
- 30 June 1991, deadline for submission of revised college instruments of government for LEAs in Inner London

- 30 September 1991, LEAs in Inner London submit schemes for approval
- 1 April 1993, deadline for full implementation of schemes

APPENDIX B

SOME DIFFERENCES BETWEEN EDUCATION REFORM ACT 1988 AND GREEN PAPER "MAINTAINED FURTHER EDUCATION: FINANCING, GOVERNANCE AND THE LAW"

UNDER THE EDUCATION REFORM ACT

- * LEA representatives not excluded from taking chair of governing body
- * governing body not required to have 2 parent representatives
- * governing body obliged to consult chief education officer on appointment of senior staff
- * clearer distinction between further and higher education
- * possibility of future corporate status for further education institutions within overall LEA control and with LEA agreement

APPENDIX C

SOME ACRONYMS AND ABBREVIATIONS USED

BTEC	- Business and Technician Education Council
DES	- Department of Education and Science
FE	- further education
GB	- governing body
HNC	- Higher National Certificate
HND	- Higher National Diploma
ILEA	- Inner London Education Authority
LEA	- Local Education Authority
NAFE	- non-advanced further education
PCFC	- Polytechnics and Colleges Funding Council
S	- section (of the Act)
WRNAFE	- work-related non-advanced further education